

United States
Circuit Court of Appeals
For the Ninth Circuit.

MARY ROGULJ,

Appellant,

vs.

ALASKA GASTINEAU MINING COMPANY, a
Corporation,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the District of Alaska, Division Number One.

FILED

DEC 13 1922

F. D. MONCKTON,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

J. H. COBB, Esq., Juneau, Alaska,
Attorney for Appellant.

H. L. FAULKNER, Esq., Juneau, Alaska,
Attorney for Appellee.

In the District Court for the Territory of Alaska,
Division No. One, at Juneau.

No. 1698-A.

MARY ROGULJ,

Plaintiff,

vs.

**ALASKA GASTINEAU MINING COMPANY, a
Corporation,**

Defendant.

Complaint.

Comes now the plaintiff in the above-entitled action and for cause of action against the above-named defendant alleges:

1. That the defendant, the Alaska Gastineau Mining Company, is a corporation duly organized and existing under and by virtue of the laws of the state of New York, and doing business in the Territory of Alaska.

2. That the defendant company employs more than five men in carrying on its mining operations in Juneau Precinct, Territory of Alaska, and has so employed more than five men in its mining oper-

ations for more than three years last past; and was on the 30th day of November, 1915, employing more than three hundred men in its mining operations.

3. That said defendant company had not prior to the 30th day of November, 1915, elected to reject the provisions of an act passed by the legislature of the Territory of Alaska, entitled "An Act relating to the measure and recovery of compensation of injured employees in the mining industry of this Territory, and the compensation to designated beneficiaries where such injuries result in death, defining and regulating the liabilities of employers to their employees in connection with such industry, and repealing all acts and parts of acts in conflict with this Act," approved April 29th, 1915.

4. That on the 30th day of November, 1915, one Peter Rogulj was, and for some time prior thereto had been, employed by the said defendant in and about its mine known as the Perseverance Mine, near Juneau, Alaska; that on the said 30th day of November, 1915, while [1*] working in said Perseverance Mine aforesaid, the said Peter Rogulj received personal injuries by accident arising out of and in course of his employment aforesaid, which said injuries resulted in the death of the said Peter Rogulj on the said 30th day of November, 1915.

5. That the said Peter Rogulj was at the time of his death aforesaid unmarried but left surviv-

*Page-number appearing at foot of page of original certified Transcript of Record.

ing him his mother, Mary Rogulj, the plaintiff herein, who was at the time of the death of the said Peter Rogulj dependent upon him for her support; that at the time of the death of the said Peter Rogulj his father was not living; that the sum of twelve hundred dollars (\$1,200.00) is now due the plaintiff as beneficiary of the said Peter Rogulj under the provisions of the act of the legislature of the Territory of Alaska, mentioned in paragraph three of this complaint.

6. That the plaintiff served upon the said defendant a notice in writing setting forth that she is the beneficiary of the said Peter Rogulj, deceased; that the plaintiff has demanded of the defendant the sum of twelve hundred dollars (\$1,200.00) due her as such beneficiary aforesaid, but defendant has neglected and refused to pay the same or any part thereof.

WHEREFORE, plaintiff prays judgment against the defendant for the sum of twelve hundred dollars (\$1,200.00), together with interest thereon at the rate of — per cent per annum from the — day of —, 1916, and for her costs and disbursements incurred herein, and a reasonable attorney's fee in prosecuting this action.

H. H. FOLSOM,
Attorney for Plaintiff. [2]

United States of America,
Territory of Alaska,—ss.

Matt Rogulj, being first duly sworn, on oath says: That he is the agent of the plaintiff in the

above-entitled action; that he has read the foregoing complaint, knows the contents thereof and believes the same to be true; that he makes this affidavit for the reason that the plaintiff is absent from the Territory of Alaska, and that he knows of his own personal knowledge that all of the matters and things set out and alleged in said complaint are true.

MATT ROGULJ.

Subscribed and sworn to before me this 30th day of November, 1917.

[Notary Seal] H. H. FOLSOM,
Notary Public for the Territory of Alaska, Re-
siding at Juneau.

My commission expires on the 15th day of March, 1921.

Filed in the District Court, District of Alaska,
First Division. Nov. 30, 1917. J. W. Bell, Clerk.
By L. E. Spray, Deputy. [3]

In the District Court for the Territory of Alaska,
Division No. One, at Juneau.

No. 1698-A.

MARY ROGULJ,

Plaintiff,

vs.

ALASKA GASTINEAU MINING COMPANY, a
Corporation,

Defendant.

Answer.

Comes now the above-named defendant, Alaska Gastineau Mining Company, and in answer to the complaint of the plaintiff on file herein, admits, denies and alleges as follows:

I.

Defendant admits the allegations contained in paragraphs I, II, III and IV of said complaint.

II.

Referring to the allegations contained in paragraph V of said complaint, defendant admits that the said Peter Rogulj was at the time of his death unmarried, admits that his father was not living at said time; and denies each and every other allegation contained in said complaint.

III.

Defendant denies the allegations contained in paragraph VI of said complaint except that it has refused to pay the plaintiff the sum of \$1,200.00, which allegation defendant admits.

AND for a further and affirmative defense to said complaint, defendant alleges as follows:

I.

That the defendant is a corporation duly organized under the laws of the State of New York and doing business in Alaska and has paid its annual corporation license taxes for the current year; and was at all times mentioned herein engaged in mining in the Territory of Alaska and employed more than five men in connection with [4] its said mining operations.

II.

That both the defendant and Peter Rogulj hereinafter mentioned were, at the times hereinafter mentioned, subject to all the provisions of Chapter 71 of the Session Laws of the Territory of Alaska, 1915, commonly known as the Workmen's Compensation Act.

III.

That on the 30th day of November, 1915, one Peter Rogulj, who was then in the employ of the defendant in connection with its mining operations, was killed while in such employment.

IV.

That at the time the said Peter Rogulj entered the employ of the defendant, on or about the 1st day of September, 1915, he furnished this defendant with a statement containing the names of his beneficiaries in accordance with the provisions of section 9 of said Compensation Act, which said statement also contained the address of said beneficiaries.

V.

That the name of the beneficiary designated in said statement by said Peter Rogulj was Mary Rogulj, his stepmother; and that the address of the said Mary Rogulj as set forth by the said Peter Rogulj in said statement was at Podaca, Austria.

VI.

That on the 1st day of December, 1915, the same being within ten days from the date of the accident which resulted in the death of the said Peter

Rogulj, the defendant mailed to the said Mary Rogulj, at the said address, by registered mail, a notice of the death of the said Peter Rogulj, with a request that she file her claim for compensation if any; which said notice was prepared and mailed in accordance with the provisions of section 9 of the said Compensation Act. [5]

VII.

That no claim for compensation was filed with the defendant nor with anyone in its employ by the said Mary Rogulj nor anyone on her behalf within 120 days from the date of the death of the said Peter Rogulj, nor at any other time.

WHEREFORE defendant prays that this complaint be dismissed and that it have and recover of and from the plaintiff its costs and disbursements herein.

H. L. FAULKNER,
Attorney for Defendant.

United States of America,
Territory of Alaska,—ss.

G. T. Jackson, being first duly sworn, deposes and says: That he is the assistant manager of the Alaska Gastineau Mining Company, the defendant above named; that he has read the foregoing answer and knows the contents thereof and that the facts therein stated are true and correct as he verily believes; and that he makes this affidavit for and on behalf of the said defendant Company.

G. T. JACKSON.

Subscribed and sworn to before me this 1st day of December, 1917.

[Notary Seal]

H. L. FAULKNER,

Notary Public for Alaska.

My commission expires Nov. 14, 1918.

Service of above answer admitted this 3d day of December, 1917.

H. H. FOLSOM,

Attorney for Plaintiff.

Filed in the District Court, District of Alaska, First Division. Dec. 3, 1917. J. W. Bell, Clerk.
By L. E. Spray, Deputy. [6]

In the District Court for Alaska, Division No. 1,
at Juneau.

No. 1698-A.

MARY ROGULJ,

Plaintiff,

vs.

ALASKA GASTINEAU MINING COMPANY, a
Corporation,

Defendant.

Reply.

Now comes the plaintiff by her attorney and for reply to the affirmative answer of the defendant, alleges:

1st. The defendant has no knowledge or information sufficient to form a belief as to the matters

and things alleged in the 6th paragraph of said affirmative answer and she therefore denies the same.

For further reply to the said affirmative answer, the plaintiff alleges: That at the time of the death of Peter Rogulj, her son alleged in the complaint herein, she was a resident of the then kingdom of Austria; that she had no knowledge of the said accident and owing to the state of war then prevailing throughout Europe and the interruption of all communications both by mail and cable, no means of obtaining such information within a 120 days' from and after such accident; that plaintiff had another son in the employ of the defendant, to wit: Matt Rogulj; that said Matt Rogulj immediately after the death of the said Peter Rogulj went to the defendant for the purpose of making claim in behalf of his mother, this plaintiff, for the compensation provided for by statute in such cases made and provided; that the defendant then and there admitted its liability to pay such compensation and promised and agreed with the said Matt Rogulj to pay the same so soon as he should obtain written authority to represent this plaintiff and to acknowledge a release and acquittance of said claim in behalf of plaintiff and the defendant expressly advised said Matt Rogulj, then acting in behalf of the plaintiff, that he need take no other [7] steps and need not consult an attorney, but all that was necessary to do to obtain the said compensation for plaintiff was to secure said power of attorney; that the said Matt Rogulj, as agent for

defendant, relied upon said promise of representation and was thereby lulled into security and accepted the advice of the defendant and did not consult an attorney nor take any further steps except to send for said power of attorney as directed by the defendant; that before information of said matters and things could be transmitted to the plaintiff and a power of attorney executed and returned to the said Matt Rogulj, more than 120 days has expired; that the plaintiff did execute the power of attorney aforesaid and transmitted the same as speedily as war conditions would permit to her said agent, Matt Rogulj, but when the same was received by the said Matt Rogulj and a request made for the payment of said moneys, the defendant declined and refused to pay the same for the reason that a written demand or claim therefor had not been presented within 120 days.

Plaintiff further alleges: That by its representations, promises, and advice aforesaid to the said Matt Rogulj, then acting in behalf of the plaintiff which actions were ratified by the plaintiff, the defendant expressly waived notice in writing of the claim of plaintiff for compensation; and further alleges that said promises, representations and advice was given for the express purpose of inducing the said Matt Rogulj to not present the claim in writing for said compensation, the defendant at the time purposing and intending if it should succeed in said fraudulent purposes, to plead the failure to give such notice as a defence and thereby defraud the plaintiff power of her

claim under the statute whereby the defendant is estopped from claiming or pleading the affirmative offense aforesaid.

And for a further reply to the said affirmative answer, plaintiff alleges: That if the defendant did mail by registered mail a notice [8] of the death of her said son as alleged in the 6th paragraph of said answer, then she alleges that the same was a vain and void act and did not and could not make it obligatory and binding upon the plaintiff to serve her claim for compensation within the 120 days for this; that because of the conditions of war then prevailing, it was a physical impossibility for a registered letter to reach her at her home in Podaco, Austria, giving her information of the death of her said son and of her duty under the law to serve the defendant for claim for said compensation within time to make and serve such claim within the said period of 120 days, all of which was well known to the defendant, and if the defendant did transmit the notices alleged in paragraph 6 of said answer, it was not done with the *bona fide* intention of complying with said law and to enable the plaintiff to put in said claim, but was done for the sole purpose of enabling the defendant to escape its just liability under the law.

WHEREFORE, plaintiff prays for judgment for the said sum of twelve hundred (\$1200.00) dollars, with legal interest thereon from November 30th, 1915, to date.

J. H. COBB,
Attorney for Plaintiff.

United States of America,
Territory of Alaska,—ss.

Matt Rogulj, being first duly sworn, on oath deposes and says: I am the agent and attorney in fact for the plaintiff and make this verification for the reason that the plaintiff is a nonresident of the Territory of Alaska. The matters and things set up in the above and foregoing reply are true as I verily believe.

MATT ROGULJ.

Subscribed and sworn to before me this the 30th day of September, 1920.

[Notary Seal] J. H. COBB,

Notary Public in and for Alaska.

My commission expires June 8, 1923.

Service for the above and foregoing reply admitted this —— day of October, 1920.

Attorney for Defendant.

Filed in the District Court, District of Alaska,
First Division. Oct. 2, 1920. J. W. Bell, Clerk.
By V. F. Pugh, Deputy. [9]

In the District Court for the District of Alaska,
Division No. One, at Juneau.

No. 1698-A.

MARY ROGULJ,

Plaintiff,

vs.

ALASKA GASTINEAU MINING COMPANY, a
Corporation,

Defendant.

Demurrer to Reply of Plaintiff.

Comes now the defendant Alaska Gastineau Mining Company by its attorney, H. L. Faulkner, and demurs to the reply of the plaintiff filed herein, and particularly to the second, third and fourth paragraphs thereof, for the reason that the matter contained therein and the allegations therein made are not a sufficient reply to the facts stated in defendant's answer, and for the reason that the same do not constitute a reply to said answer.

H. L. FAULKNER,
Attorney for Defendant.

Filed in the District Court, District of Alaska,
First Division. Mar. 3, 1921. J. W. Bell, Clerk.
By V. F. Pugh, Deputy. [10]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1698-A.

MARY ROGULJ,

Plaintiff,

vs.

ALASKA GASTINEAU MINING COMPANY, a
Corporation,

Defendant.

Order Sustaining Demurrer to Reply.

This matter having come on for hearing, upon the demurrer of the defendant to the plaintiff's reply to defendant's answer, and the matter having been argued and submitted to the Court for decision on October 15, 1921, and the Court being fully advised in the premises,—

IT IS HEREBY ORDERED that the said demurrer be, and the same is hereby sustained, and the plaintiff is allowed one week from October 29, 1921, in which to further plead.

Done in open court this 31st day of October, 1921.

T. M. REED,
Judge.

O. K.—COBB.

Filed in the District Court, District of Alaska,
First Division. Oct. 31, 1921. John H. Dunn,
Clerk. By —————, Deputy.

Entered Court Journal. No. "Q," page 388.

[11]

In the District Court for Alaska, Division No. One,
at Juneau.

No. 1698-A.

MARY ROGULJ,

Plaintiff,

vs.

ALASKA GASTINEAU MINING CO., a Corpo-
ration,

Defendant.

Amended Reply.

Now comes the plaintiff by her attorney, and leave of the Court first being had, amends her original reply herein, so that the same shall hereafter read as follows:

Now comes the plaintiff, by her attorney, and for reply to the affirmative answer of the defendant, alleges:

Referring to paragraphs V, VI and VII of said affirmative answer, plaintiff denies all and *and* singular the allegations therein contained.

WHEREFORE she prays judgment as in her original complaint.

J. H. COBB,
Attorney for Plaintiff.

United States of America,
Territory of Alaska,—ss.

Matt Rogulj, being first duly sworn, on oath deposes and says: I have heard read the above and

foregoing reply, and the same is true as I verily believe. I am agent for the plaintiff, and make this verification for the reason that the plaintiff is a nonresident of, and is absent from the Territory of Alaska.

MATT ROGULJ.

Subscribed and sworn to before me this 3d day of November, 1921.

[Notary Seal]

J. H. COBB,

Notary Public in and for Alaska.

My commission expires June 8th, 1923.

Service admitted this Nov. 4th, 1921.

H. L. FAULKNER,

Attorney for Defendant.

Filed in the District Court, District of Alaska, First Division. Nov. 5, 1921. John H. Dunn, Clerk. By _____, Deputy. [12]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1698-A.

MARY ROGULJ,

Plaintiff,

vs.

**ALASKA GASTINEAU MINING COMPANY, a
Corporation,**

Defendant.

Judgment Nunc Pro Tunc.

The above-entitled and numbered cause having

been heretofore on the 22d day of June, 1922, duly and regularly tried, and a verdict of a jury had, and judgment pronounced; and whereas, by inadvertence said judgment was not entered of record: Now on motion of the defendant for the entry of such judgment *nunc pro tunc*, it is ordered that the following judgment be entered by the clerk as of June 22d, 1922, to wit:

No. 1698-A.

MARY ROGULJ,

Plaintiff,

vs.

ALASKA GASTINEAU MINING COMPANY, a
Corporation,

Defendant.

Judgment.

This cause came on regularly to be heard and both parties announced ready for trial; and thereupon came a jury of twelve good and lawful men, to wit, L. H. Smith and eleven others, who having been duly selected, impaneled and sworn, and having heard the evidence and having been instructed by the Court to return a verdict for the defendant, returned into court the following verdict, to wit: [13]

“United States of America,
District of Alaska.

In the District Court of the United States for the
District of Alaska, Division No. One.

No. 1698-A.

March Special Term, 1922.

MARY ROGULJ

vs.

ALASKA GASTINEAU MINING CO., a Corpora-
tion.

Verdict.

We, the Jury empaneled and sworn in the above-entitled cause, find a verdict for the defendant.

Dated at Juneau, Alaska, this the 22d day of June, 1922.

L. H. SMITH,
Foreman.”

It is therefore considered by the Court, and it is so ordered and adjudged, that the plaintiff take nothing by her action herein; that the defendant go hence without delay and have and recover of and from the plaintiff its costs herein to be taxed by the clerk, for which let execution issue.

Dated this the 22d day of June, 1922.

THOS. M. REED,
Judge.

Filed in the District Court, District of Alaska,
First Division. Oct. 25, 1922. John H. Dunn,
Clerk. By _____, Deputy.

Entered Court Journal No. R, pages 395, 396.
[14]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1698-A.

MARY ROGULJ,

Plaintiff,

vs.

ALASKA GASTINEAU MINING COMPANY, a
Corporation,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED that on the trial of the
above-entitled and numbered cause the following
proceedings were had:

The plaintiff to maintain the issues on his
part, introduced in evidence the testimony of
MATT ROGULJ, as follows:

Testimony of Matt Rogulj, for Plaintiff.

I am a stepson of the plaintiff and a brother to
Pete Rogulj who was killed in an accident while
in the employ of the defendant. At the time of
the death of Pete Rogulj the plaintiff, who is a
widow, was dependent upon Pete and I for her
support and had been for some years. I know

(Testimony of Matt Rogulj.)

personally of his sending to her from his wages, as we frequently sent our money to her at the same time since about 1911. At the time of his death Pete Rogulj contributed from \$125.00 to \$150.00 per year to his stepmother's support, and I contributed about the same amount, sometimes a little more and sometimes a little less, according as we were employed. The money that we sent to her was her sole support except the product of a small kitchen garden which provided her with a few vegetables. Since the death of Pete I have been her sole support.

And thereupon the plaintiff rested.

And the defendant to maintain the issues on its part, read to the jury the following stipulation:

It is hereby stipulated and agreed by and between J. H. Cobb, attorney for plaintiff, and H. L. Faulkner, attorney for defendant, that the following facts may be admitted in evidence upon the trial [15] of the above-entitled cause and held to be established, to wit:

That on September 7, 1915, Pete Rogulj entered the employ of the Alaskan Gastineau Mining Company, and that upon said date he signed a certificate of employment and a statement under the provisions of section nine of the Workmen's Compensation Act of Alaska. That said statement was made by Peter Rogulj, and that he stated that he had a brother named Matt Rogulj, who was at that time working for the Alaska Juneau Mine, and he further stated that he, the said Peter Rogulj,

(Testimony of B. L. Thane.)

was not married and had no children, and that his father was dead and that he had a stepmother at that time living at Podaca, Austria, named Mary Rogulj, and that her age on September 7, 1915, was sixty-three. It is further stipulated that said statement was signed in accordance with the provisions of Section Nine, Chapter 71 of the Session Laws of Alaska, 1915, known as the Workmen's Compensation Act for Alaska, and that the said statement was signed in the presence of and witnessed by L. J. Reedy.

The defendant next introduced in evidence the testimony of B. L. THANE, which was as follows:

Testimony of B. L. Thane, for Defendant.

"That during the months of November and December, 1915, and January, February, March and April, 1916, I was general manager of the Alaska Gastineau Mining Company, the defendant herein; that during the months of November and December, 1915, and January, February, March and April, 1916, neither Mary Rogulj nor anyone in her behalf filed with me or served upon me any claim in writing for compensation for the death of Peter Rogulj, who was killed in the employ of the defendant Company in November, 1915."

The defendant next introduced in evidence the testimony of G. T. JACKSON, which was as follows:

Testimony of G. T. Jackson, for Defendant.

"My name is G. T. Jackson, and I was assistant manager of the Alaska Gastineau Mining Com-

(Testimony of G. T. Jackson.)

pany, the defendant herein, in November and December, 1915. That one of the duties of my office as assistant manager was to give notice, as required by law, to beneficiaries of employees killed in the employ of the defendant company. I was [16] assistant manager of the Alaska Gastineau Mining Company at the time Peter Rogulj was killed on November 30, 1915. On December 1, 1915, I mailed to Mary Rogulj at Padaca, Austria, a notice of the death of Peter Rogulj, which notice was as follows, to wit:

‘Juneau, Alaska, December 1, 1915.

To Mary Rogulj, Padaca, Austria.

This is to advise you that Peter Rogulj became deceased on the 30th day of November, 1915, as a result of an injury received while in the employ of the Alaska Gastineau Mining Company. You will take notice that all persons entitled to benefits because of the fact that the above-named employee was injured, and, as a result therefrom became deceased, under the laws of Alaska are required to serve notice upon the employer within one hundred and twenty (120) days after the date on which such employee became deceased, in accordance with the provisions of the laws of Alaska upon that subject, and that a failure to serve such notice within the time specified and in the manner specified, will result in depriving the beneficiary, failing to give such notice within such time and in

(Testimony of G. T. Jackson.)

such manner, of his or her rights to compensation under the laws of Alaska.

ALASKA GASTINEAU MINING COMPANY,

By G. T. JACKSON,
Assistant Manager.'

That said notice was mailed at the United States Postoffice, Juneau, Alaska, by registered mail. That neither Mary Rogulj nor Matt Rogulj, nor anyone in behalf of Mary Rogulj, filed any claim for compensation with me as Assistant Manager of said Alaska Gastineau Mining Company at any time within one hundred and twenty (120) days after December 1, 1915."

Testimony of Agnes Manning, for Defendant.

The defendant next introduced the testimony of AGNES MANNING, who testified that on the second day of December, 1915, she was a clerk in the United States postoffice, at Juneau, Alaska, and that on said day the Alaska Gastineau Mining Company mailed a letter through said postoffice addressed to Mary Rogulj at Podaca, Austria. That [17] the said letter was registered by her. She further testified that the receipt for said registered letter was prepared by her and made out in her handwriting. Thereupon defendant introduced said receipt, which was identified by the said witness and received in evidence and marked Defendant's Exhibit "A."

The defendant thereupon rested.

Testimony of Mike Juras, for Plaintiff.

MIKE JURAS, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. COBB.

Q. Please state your name.

A. My name is Mike Juras.

Q. Mike—? A. Juras.

Q. (Spelling:) J-u—? A. (Spells:) J-u-r-a-s.

Q. Mike Juras. Where do you live now?

A. I live in the Basin boarding-house of the Alaska-Juneau.

Q. Speak so all these gentlemen can hear you. You are working you say, at the Alaska Juneau?

A. Alaska-Juneau mine.

Q. Of what country are you a native?

A. Austria.

Q. How's that? A. Austria.

Q. Austria. Do you know the plaintiff, Mary Rogulj—did you know her before you came to America? A. Yes.

Q. Know where she lived? A. Yes.

Q. Know her postoffice address? A. Yes.

Q. State whether or not you were born in the same neighborhood. [18]

A. Yes, I was born right close.

Q. Now, state to the jury what was Mary Rogulj's postoffice address.

A. The address was Zastroy, Dalmatia.

(Testimony of Mike Juras.)

Q. I will ask you to write that down.

(Witness writes: "P. O. Zastroy, selo Bodaca, Dalmatia, Austria.")

Mr. FAULKNER.—If the Court please, I object to this evidence as incompetent, irrelevant and immaterial. The question is not what her address was, but what the employee furnished the company.

The COURT.—I'll hear from the other side on that.

Whereupon plaintiff's counsel stated that he proposed to prove by said witness that Mary Rogulj the plaintiff, lived, and had always lived, at Podaca, Austria, that Podaca was not a post-office, but a mere country district; that her post-office address was, and always had been, "Zastroy, selo Bodaca, Dalmatia, Austria." After argument, the Court sustained the objection, to which ruling the plaintiff excepted. Plaintiff thereupon rested.

The Court thereupon instructed the jury to return a verdict for the defendant, to which plaintiff duly excepted. And the above and foregoing was all the evidence introduced or offered in the case.

And because the above and foregoing matters do not appear of record, I, Thomas M. Reed, the Judge before whom said case was tried, do hereby approve the foregoing bill of exceptions, certify that the same is correct, and order it filed and made a part of the record herein.

Done this the 22d day of July, 1922, and during the term at which said cause was tried.

THOS. M. REED,
Judge.

Copy of the foregoing bill of exceptions received this the 14th day of July, 1922.

_____,
Attorney for Defendant.

Filed in the District Court, District of Alaska, First Division. Jul. 22, 1922. J. H. Dunn, Clerk. By _____, Deputy. [19]

In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1698-A.

MARY ROGULJ,

Plaintiff,

vs.

ALASKA GASTINEAU MINING COMPANY,
a Corporation,

Defendant.

Assignment of Errors.

Now comes the plaintiff by her attorney and assigns the following errors committed by the Court during the trial and in the rendition of the judgment in said cause, upon which she will rely on her appeal.

I.

The Court erred in sustaining the demurrer of

the defendant to the affirmative reply of the plaintiff setting up the waiver and estoppel as against the defendant to plead the special limitation of one hundred and twenty days within which to serve notice of the claim sued upon.

II.

The Court erred in sustaining the objections of the defendant to the testimony of Mike Juras tending to show that Mary Rogulj, the plaintiff, lived and had always lived at Podaca, Austria, that Podaca was not a postoffice, but a mere country district; that her postoffice address was and always had been, Zastroy, selo Bodaca, Dalmatia, Austria.

III.

The Court erred in instructing the jury to return a verdict for the defendant. [20]

And, for the above errors the plaintiff prays that the judgment in favor of the defendant in the above-entitled cause be reversed and the cause remanded with such directions as to this Court may seem proper.

J. H. COBB,
Attorney for Mary Rogulj, Plaintiff.

Filed in the District Court, District of Alaska, First Division. Oct. 21, 1922. John H. Dunn, Clerk. By _____, Deputy. [21]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1698-A.

MARY ROGULJ,

Plaintiff,

vs.

**ALASKA GASTINEAU MINING COMPANY, a
Corporation,**

Defendant.

Petition for Allowance of Appeal.

To the Honorable, the Judge of the District Court
for Alaska, Division Number One:

Mary Rogulj, the above-named plaintiff, considering herself aggrieved by the judgment in favor of the defendant entered herein the — day of June, 1922, appeals from said judgment to the Honorable, the United States Circuit Court of Appeals for the Ninth Circuit, and having filed her assignment of errors herein, she prays the Court to make an order allowing said appeal and directing the clerk of this Court to transmit a transcript of the record herein to the said United States Circuit Court of Appeals.

J. H. COBB,

Attorney for Mary Rogulj, Plaintiff.

Upon consideration of the foregoing petition for allowance of appeal, it is ordered that appeal prayed for be, and the same is hereby allowed.

Dated this the 21st day of October, 1922.

THOS. M. REED,

Judge.

Filed in the District Court, District of Alaska,
First Division. Oct. 21, 1922. John H. Dunn,
Clerk. By _____, Deputy.

Entered Court Journal, No. R, page 391. [22]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1698-A.

MARY ROGULJ,

Plaintiff,

vs.

ALASKA GASTINEAU MINING COMPANY, a
Corporation,

Defendant.

Citation on Appeal.

The President of the United States of America to
the Alaska Gastineau Mining Company, a Cor-
poration, and H. L. Faulkner, Its Attorney of
Record, GREETING:

You and each of you are hereby cited and ad-
monished to be and appear at a United States
Circuit Court of Appeals for the Ninth Circuit,
to be holden in the City of San Francisco, in the
State of California, within thirty days from the
date hereof, pursuant to an order allowing an
appeal from the decree and judgment in the cause

lately pending in the said Court between Mary Rogulj, plaintiff, and you as defendant, then and there to show cause, if any there be, why the decree and judgment mentioned in said order should not be reversed, and speedy justice done to the parties in that behalf.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this the 21st day of October, 1922, and of the Independence of the United States the one hundred and forty-seventh.

THOS M. REED,
Judge.

[Seal] Attest: JOHN H. DUNN,
Clerk.

Filed in the District Court, District of Alaska, First Division. Oct. 21, 1922. John H. Dunn, Clerk. By _____, Deputy. [23]

Service of the above and foregoing citation is admitted this the 21st day of October, 1922.

H. L. FAULKNER,
Attorney for the Alaska Gastineau Mining Company, Defendant [24]

In the District Court for the District of Alaska,
Division Number One, at Juneau.

No. 1698-A.

MARY ROGULJ,

Plaintiff,

vs.

ALASKA GASTINEAU MINING COMPANY, a
Corporation,

Defendant.

Cost Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, that we, Mary Rogulj, as principal, and Emery Valentine and _____, as sureties, hereby acknowledge ourselves to be indebted and bound to pay to the Alaska Gastineau Mining Company, a corporation, the sum of Two Hundred Fifty (\$250.00) Dollars, good and lawful money of the United States, for the payment of which sum, well and truly to be made, we hereby bind ourselves, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such, however, that whereas the above-bound Mary Rogulj has appealed from the judgment in the the above-entitled cause on the — day of June, 1922, to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the said judgment of the

said District Court of Alaska, Division Number One:

Now, if the said Mary Rogulj shall prosecute her appeal to effect, and pay all such costs and damages as may be awarded against her if she fail to make her plea good, then this obligation shall be null and void; otherwise to remain in full force and effect.

Witness our hands this the 21st day of October, 1922.

MARY ROGULJ,

By Her Attorney of Record,

J. H. COBB.

EMERY VALENTINE.

Approved as to form and sufficiency of sureties, this the 21st day of October, 1922.

THOS. M. REED,

Judge.

Filed in the District Court, District of Alaska, First Division. Oct. 21, 1922. John H. Dunn, Clerk. By ———, Deputy. [25]

In the District Court for the District of Alaska, Division Number One, at Juneau.

No. 1698-A.

MARY ROGULJ,

Plaintiff,

vs.

ALASKA GASTINEAU MINING COMPANY, a Corporation,

Defendant.

Praecept for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please make out a transcript of the record in the above cause, and include therein the following papers, and transmit the same to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco.

First. Complaint, filed Nov. 30th, 1917.

Second. Answer, filed Dec. 3d, 1917.

Third. Reply, filed Oct. 20th, 1920.

Fourth. Demurrer to reply, filed March 3, 1921.

Fifth. Order sustaining demurrer, filed Oct. 31, 1921.

Sixth. Amended reply, filed Nov. 5, 1921.

Seventh. Final judgment.

Eighth. Bill of exceptions.

Ninth. Assignment of errors.

Tenth. Petition for appeal and order allowing appeal.

Eleventh. Citation.

Twelfth. Bond.

Said transcript to be made in accordance with the Rules of the said Court of Appeals.

J. H. COBB,
Attorney for Mary Rogulj, Plaintiff.

Filed in the District Court, District of Alaska, First Division. Oct. 24, 1922. John H. Dunn, Clerk. By L. E. Spray, Deputy. [26]

In the District Court for the District of Alaska,
Division No. 1, at Juneau.

United States of America,
District of Alaska, Division No. 1,—ss.

Certificate of Clerk U. S. District Court to Transcript of Record.

I, John H. Dunn, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached twenty-six pages of typewritten matter, numbered from one to 26, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the record, prepared in accordance with the praecipe of counsel for appellant, in cause No. 1698-A, on file in my office and made a part hereof, wherein Mary Rogulj is plaintiff and appellant and Alaska Gastineau Mining Company, a corporation, is defendant and appellee.

I further certify that said record is by virtue of an appeal and citation issued in this cause, and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to the sum of Eleven and 85/100 (\$11.85) Dollars, has been paid to me by counsel for appellant.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled court this 26th day of October, 1922.

[Seal]

JOHN H. DUNN,
Clerk.
By L. E. Spray,
Deputy.

[Endorsed]: No. 3942. United States Circuit Court of Appeals for the Ninth Circuit. Mary Rogulj, Appellant, vs. Alaska Gastineau Mining Company, a Corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Division Number One.

Filed November 10, 1922.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

